

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0136
Mark Zwisle)	
)	
Petitioner)	Decision and Order

1. Mark Zwisle, the Petitioner (“Petitioner Zwisle”), represents himself (appears *pro se*). The hearing by telephone was held on April 12, 2011.

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Mary E. Kimball. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
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3. I encourage **Petitioner Zwisle and the collection agency** to work together to **establish a repayment schedule** rather than proceeding with garnishment, even though this Decision **authorizes garnishment beginning December 2011**. Petitioner Zwisle, obviously, will have to make himself available to the collection agency if he wants to negotiate. *See* paragraph 13.

Summary of the Facts Presented

4. USDA Rural Development’s Exhibits, plus Narrative, Witness & Exhibit List, were filed on March 9, 2011, and are admitted into evidence, together with the testimony of Ms. Kimball.

5. Petitioner Zwisle's "Consumer Debtor Financial Statement" and a copy of his W-2 Wage and Tax Statement for 2010, were filed on May 9, 2011, and are admitted into evidence, together with the testimony of Petitioner Zwisle. Also admitted into evidence are Petitioner Zwisle's Hearing Request and attached Statement, filed in January 2011.

6. Petitioner Zwisle owes to USDA Rural Development **\$11,926.81** (as of February 16, 2011) in repayment of a USDA Farmers Home Administration loan made in October 1989 for a home in Pennsylvania, the balance of which is now unsecured ("the debt"). *See* USDA Rural Development Exhibits, esp. RX 4 (both pages).

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$11,926.81** would increase the current balance by \$3,339.51, to \$15,266.32. *See* USDA Rural Development Exhibits, esp. RX 5.

8. Petitioner Zwisle asserts that he was not afforded due process as the loan went into default, through a short sale, and then for collection. Petitioner Zwisle testified that he had lived in the property only about 9 months before he left his wife and co-borrower, Wanda J. Zwisle, in the home. Petitioner Zwisle's Statement attached to his Hearing Request states that they had not resided together since Oct/Nov 1990. Petitioner Zwisle maintains that the loan balance is entirely his co-borrower's responsibility.

9. About 10 years after the loan was made, on May 13, 1999, the loan was re-amortized (the amount delinquent on the account was added to principal, making the loan current). *See* Narrative. Notice of Acceleration (that the entire indebtedness was declared immediately due and payable) was sent to Petitioner Zwisle by certified mail on March 28, 2000, at both the Pennsylvania address of the home; and a South Carolina address where it appears that Dustin Zwisle signed to take delivery of the Notice, on April 1, 2000. RX 6.

10. Petitioner Zwisle testified that his divorce from co-borrower Wanda J. Zwisle happened 4-5 years before the short sale of the home on December 1, 2000, although the divorce proceeding was bifurcated, so that no property settlement occurred. Petitioner Zwisle testified that he signed a quitclaim deed to his co-borrower, so that she could accomplish the sale. He maintains that any balance remaining to be collected after the sale is the responsibility of his co-borrower.

11. Petitioner Zwisle's disposable income is about \$4,000.00 per month. [Disposable income is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.] Petitioner Zwisle supports himself and his wife Rhonda, and his "Consumer Debtor Financial Statement" shows living expenses in excess of his disposable income. Petitioner Zwisle is paying a student loan. Although Garnishment at 15% of Petitioner Zwisle's disposable pay would yield roughly \$600.00 per month in repayment of

the debt, he cannot withstand garnishment in that amount without hardship. To prevent hardship, potential garnishment to repay “the debt” (*see* paragraph 6) must be limited to **0%** of Petitioner Zwisle’s disposable pay through November 2011; then up to **15%** of Petitioner Zwisle’s disposable pay beginning December 2011 and thereafter. 31 C.F.R. § 285.11.

12. Petitioner Zwisle is responsible and willing and able to negotiate the disposition of the debt with Treasury’s collection agency.

Discussion

13. Through November 2011, no garnishment is authorized. Beginning December 2011, garnishment up to 15% of Petitioner Zwisle’s disposable pay is authorized. [*See* paragraph 11.] I encourage **Petitioner Zwisle and the collection agency** to **negotiate promptly** the repayment of the debt. Petitioner Zwisle, this will require **you** to telephone the collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Zwisle, you may ask that the debt be **apportioned separately** to you and your co-borrower, Wanda Griffith, formerly Wanda J. Zwisle. You may choose to offer to the collection agency to compromise the debt for an amount you are able to pay, to settle the claim for less.

Findings, Analysis and Conclusions

14. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Zwisle and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

15. Petitioner Zwisle owes the debt described in paragraphs 6 through 10. If Petitioner Zwisle claims reimbursement from his co-borrower, he may pursue such claim against his co-borrower, but that does not prevent USDA Rural Development from collecting from him.

16. **Garnishment is authorized**, as follows: through November 2011, **no** garnishment. *I am **NOT**, however, ordering any amounts already collected through garnishment of Petitioner Zwisle’s pay prior to implementation of this Decision to be returned to Petitioner Zwisle.* Beginning December 2011, garnishment up to 15% of Petitioner Zwisle’s disposable pay. 31 C.F.R. § 285.11.

17. Repayment of the debt may also occur through **offset** of Petitioner Zwisle’s **income tax refunds** or other **Federal monies** payable to the order of Mr. Zwisle.

Order

18. Until the debt is repaid, Petitioner Zwisle shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

19. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through November 2011. Beginning December 2011, garnishment up to 15% of Petitioner Zwisle's disposable pay is authorized. 31 C.F.R. § 285.11.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 12th day of May 2011

s/Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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